No. 06-

IN THE

Supreme Court of the United States

DOREL INDUSTRIES, INC.,

Petitioner,

v.

SUPERIOR COURT OF SANTA CLARA COUNTY, CALIFORNIA,

Respondent.

(Jonathan Jackson III, by and through his Guardian ad Litem, Jocelyn Sullivan, and Jocelyn Sullivan, Real Parties in Interest)

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SIXTH DISTRICT

PETITION FOR A WRIT OF CERTIORARI

CATHERINE M. MASTERS
Counsel of Record
CAROL R. PRYGROSKY
JONATHAN JUDGE
SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, Illinois 60606
(312) 258-5500

Attorneys for Petitioner

201856

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

The Constitution forbids courts from exercising jurisdiction over a foreign defendant unless the defendant has minimum contacts with the forum. The California courts have adopted a "representative services doctrine," attributing to foreign parent corporations the contacts of their subsidiaries, when the subsidiaries perform a function assisting the parents' business. The court below applied this doctrine to exercise jurisdiction over a Canadian defendant whose indirect Indiana subsidiary sold products in California, only because the parent purchased *different* products from the subsidiary *outside* California. Is California's doctrine, which conflicts with every federal Circuit that has considered the issue, constitutionally permissible?

PARTIES TO THE PROCEEDING

This matter arose from a lawsuit in the Superior Court of Santa Clara County, California, brought by Jonathan Jackson III (by and through his Guardian ad Litem, Jocelyn Sullivan) and Jocelyn Sullivan, individually, against Dorel Industries, Inc., Dorel Juvenile Group, Inc., Wal-Mart Stores, Inc., and Taylon Orr. The trial court asserted personal jurisdiction over Dorel Industries. Dorel Industries filed a Petition for a Writ of Mandate or Prohibition in the California Court of Appeal, seeking review of the California trial court's jurisdictional ruling.

The petitioner in this Court is Dorel Industries Inc., which was the mandamus petitioner below.

The respondent is the Superior Court of Santa Clara County, California, the mandamus respondent below.

The real parties in interest are Jonathan Jackson, III, and Jocelyn Sullivan, the plaintiffs in the underlying lawsuit.

CORPORATE DISCLOSURE STATEMENT

Dorel Industries Inc. is a publicly-traded Canadian corporation. It has no parent company. Franklin Templeton Investments Corporation, a subsidiary of publicly-traded Franklin Resources, Inc., owns more than 10% of the Class B shares of Dorel Industries Inc.

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OPINIONS / ORDERS BELOW

The Superior Court of California for the County of Santa Clara denied Dorel Industries' Motion to Quash Service of Process in an Order dated February 17, 2005 (Appendix B, 23a–32a). The Order is unreported.

The California Court of Appeal denied Dorel Industries' Petition for Writ of Mandate and/or Prohibition in an Opinion (Appendix A, 1a–22a) published at 36 Cal. Rptr. 3d 742 (Ct. App. 2005).

The California Supreme Court denied Dorel Industries' Petition for Review of the Court of Appeal's Opinion, with one justice dissenting, in an Order (Appendix C, 33a) dated March 1, 2006. To date, the Order is unreported.

STATEMENT OF JURISDICTION

The final, appealable Opinion of the California Court of Appeal denying the Petition for Writ of Mandate or Prohibition was entered on December 15, 2005. Dorel Industries timely filed a petition for discretionary review with the California Supreme Court on January 25, 2006. The California Supreme Court denied the petition for review on March 1, 2006. On May 22, 2006, Justice Kennedy granted Dorel Industries' Motion for Extension of Time, allowing the instant petition to be filed on or before June 29, 2006. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

2. California Code of Civil Procedure Section 410.10 states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

STATEMENT OF THE CASE

This case concerns the power of a court to exercise jurisdiction over a foreign corporation that itself lacks minimum contacts with the forum state, based on the contacts of the foreign corporation's subsidiary. The California courts have adopted a "representative services doctrine," under which they impute a subsidiary's minimum contacts to the parent corporation, even if the parent and subsidiary properly observe separate corporate formalities, and even if the subsidiary does not act as the parent's agent in the forum, so long as the subsidiary performs a function (even if it is completely outside the forum and unrelated to the litigation) that assists the parent's business. This doctrine was applied here to assert jurisdiction over a Canadian parent corporation without minimum contacts with California, in a lawsuit concerning a product sold in California by the parent's indirect Indiana subsidiary, solely because the parent bought different products in a different state from the subsidiary. This doctrine and its application starkly conflict with the decisions of all federal Circuits that have considered the question. The issue is whether the representative services doctrine, as applied by the California courts, violates the Due

Process Clause. The issue is especially important because of its impact on international parties and because of the national prominence of California commerce.

A. The Underlying Litigation.

Jonathan Jackson III and Jocelyn Sullivan, the real parties in interest ("Real Parties"), filed the underlying lawsuit on February 19, 2004, alleging that Jonathan Jackson III was injured in an automobile accident while riding in a Cosco Grand Explorer booster seat, and that the booster seat was defective and unreasonably dangerous. *Jackson, et al. v. Dorel Juvenile Group, et al.*, No. 1-04-CV-014652 (Superior Court of California, County of Santa Clara). Dorel Juvenile Group, Inc. ("DJG"), the alleged manufacturer of the booster seat, and Wal-Mart Stores, Inc., the alleged retailer, entered general appearances. The Real Parties later designated Dorel Industries, DJG's corporate grandparent, as a Doe defendant. After service of the Complaint, on September 7, 2004, Dorel Industries specially appeared in order to move to quash the service of summons, on the ground that the court lacked jurisdiction over its corporate person.[1] The Real Parties opposed the motion.[2]

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1. To preserve a personal jurisdiction challenge, a defendant in California must file a special (limited) appearance and a motion to quash the service of summons upon it. The denial of such a motion to quash may be challenged only through a writ petition to the California appellate court. Cal. Code Civ. P. § 418.10. The appellate court's disposition of the writ petition is the final remedy under California law. *See Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984).

2. California places the burden upon the plaintiff to prove the existence of jurisdiction by a preponderance of the evidence. *Tri-West Ins. Services, Inc. v. Seguros Monterrey Aetna, S.A.*, 93 Cal. Rptr. 2d 78, 82 (Ct. App. 2000).

B. Dorel Industries' Corporate and Business Relationships.

Dorel Industries is a Canadian corporation with its principal place of business in Montreal. Until the 1980s, Dorel Industries was a closely-held operating company that manufactured and sold c ild restraint systems (commonly referred to as child "car seats") in Canada. Canadian and United States child restraints are subject to different regulatory regimes, and products designed to comply with one country's regulations do not comply with the other's. Dorel Industries' child restraints were therefore never distributed in California, or anywhere else in the United States.

In 1987 Dorel Industries went public and refocused its business as a parent holding company to foreign subsidiary investments, In 1988 Dorel Industries purchased Cosco, Inc., an Indiana corporation with an established presence and expertise in the United States child restraint market, including California. Dorel Industries ceased manufacturing child restraints, and began purchasing restraints made by Cosco in Indiana, designed to comply with Canadian rather than United States regulations, for distribution only in Canada.

Cosco's corporate successor is DJG, a Massachusetts corporation with its principal place of business in Indiana. Dorel Industries owns 100% of the stock of Dorel U.S.A., Inc., a Delaware holding company that in turn owns 100% of the stock of DJG. Dorel Industries and DJG continue the business relationship that Dorel Industries had with Cosco, with Dorel Industries purchasing Indiana-manufactured restraints, designed to comply with Canadian regulations, for distribution only in Canada.

As the California Court of Appeal recognized, Dorel Industries and DJG have a "normal parent-subsidiary relationship." For example, Dorel Industries conducts annual budget meetings with DJG to monitor the status of its investment; it monitors sales and product development; two members of DJG's board of directors are also members of Dorel Industries' ten-member board; it prepares consolidated financial statements to report to the SEC the activity of all its subsidiaries (as required by Generally Accepted Accounting Principles and federal law) — "[n]one of [which] appears to be outside the normal parent-subsidiary relationship." Appendix A, 13a-14a. The court further recognized that Dorel Industries and DJG operate independently, maintaining separate corporate records and observing all corporate formalities; that Dorel Industries exercises no day-to-day control over DJG's personnel, accounting, or operations; and that DJG designs, manufactures, and distributes its own child restraints for the United States market, and not as Dorel Industries' agent. Appendix A, 14a.

Dorel Industries' own contacts with California are few and isolated. It holds a license from the California Bureau of Home Furnishings and Thermal Insulation. On one occasion, it guaranteed DJG's lease of a warehouse (but booster seats were not stored there, and though the lease's forum selection clause selects Orange County, California for disputes arising from the guarantee, this litigation neither arose from the guarantee nor was filed in Orange County). Dorel Industries has no employees in California, is not registered to conduct business in California, and has no registered agent for service of process in California. It has no real property, offices, bank accounts, business records, or telephone listings in California. It does not advertise or pay taxes in California.

Dorel Industries' employees had no involvement in the design, manufacture, or distribution of the Cosco Grand Explorer booster seat at issue here, which was designed by DJG to comply with United States regulations and sold in California. Dorel Industries employs no design or manufacturing engineers, and does not operate any facilities that manufacture child restraints. Dorel Industries' only Grand Explorer involvement was its distribution in Canada of booster seats that DJG designed to comply with Canadian regulations and manufactured in Indiana.

C. Procedural History.

Dorel Industries specially appeared in the Santa Clara County Superior Court and moved to quash the service of summons, arguing that the court lacked constitutional power to exercise personal jurisdiction, since Dorel Industries had insufficient contacts with the forum. The court denied the motion on February 17, 2005, holding that it could exercise jurisdiction over Dorel Industries under California's "representative services doctrine." Appendix B, 28a-29a. The California representative services doctrine holds that a California court may exercise jurisdiction over a foreign parent corporation whose local subsidiary performs a function that assists the parent's pursuit of its own business. Appendix B, 28a. The court held that since Dorel Industries purchased products from DJG (which did business in California), DJG assisted Dorel Industries in its business, subjecting Dorel Industries to jurisdiction in California. Appendix B, 28a-29a.

Dorel Industries timely petitioned the Court of Appeal of California, Sixth Appellate District for a writ of mandate or prohibition directing the Superior Court to grant the motion to quash, contending that California's representative services

doctrine, as applied by the Superior Court, violated the Due Process Clause of the Fourteenth Amendment to the United States Constitution. On December 15, 2005, the Court of Appeal denied the petition in a published opinion. Appendix A, 1a-22a.

The Court of Appeal acknowledged Dorel Industries' and DJG's corporate separateness and that Dorel Industries no longer designs or manufactures child restraints, never distributed a child restraint outside of Canada, and had no role in the design, manufacture, and distribution of the booster seat at issue in the *Jackson* litigation. It held that the agency theory of general jurisdiction (applicable when a foreign parent acts within a jurisdiction through the agency of its subsidiary) did *not* apply. Appendix A, 14a.

Nonetheless, the Court of Appeal concluded that Dorel Industries was subject to general personal jurisdiction in California under the representative services doctrine as a "variant of the agency theory of general jurisdiction." *Id.* It described this doctrine as applying when a subsidiary that is subject to the forum's jurisdiction provides services to the parent — even if completely outside the forum — that the parent would otherwise perform itself. Appendix A, 14a-15a. It held that the doctrine applied here "because DJG performs a function that is compatible with and assists [Dorel Industries] in the pursuit of [Dorel Industries'] own business," since "the Canadian parent company used its U.S. subsidiary to design and manufacture the car seats, a task it otherwise would have done itself, to meet the demands of its Canadian customers." Appendix A, 19a-20a. Thus, the court concluded that "this case meets the requirements for the exercise of general jurisdiction [in *California*] under the representative services doctrine," only because DJG sent

products from *Indiana* to *Canada*, assisting its Canadian parent's *Canadian* business. Appendix A, 20a. It subjected Dorel Industries to jurisdiction in California even though the "representative service" that its subsidiary provided had no nexus whatsoever with California.

On January 24, 2006, Dorel Industries timely petitioned the California Supreme Court for review of the Court of Appeal's decision. It contended that the representative services doctrine, as applied by the California courts, violates the due process minimum contacts requirement, since the services DJG provided to Dorel Industries had no connection with California, and DJG's contacts with California had no connection to Dorel Industries. With one justice dissenting, the California Supreme Court denied review on March 1, 2006. Appendix C, 33a.

On May 22, 2006, Justice Kennedy granted Dorel Industries' application for an extension of time to file its petition for a writ of certiorari until June 29, 2006.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari to resolve a grave split of authority on a constitutional question of great commercial and international importance. The question concerns a court's power to exercise jurisdiction over a foreign parent corporation — indeed, an internationally foreign parent corporation — based on the activity of a subsidiary corporation and its relationship to the parent. In stark contrast to the federal Circuits that have considered the issue, California has formulated a theory of general personal jurisdiction that functionally eliminates the distinction between parent and subsidiary companies. Under California's

representative services doctrine, when a subsidiary is subject to jurisdiction in California, its parent is too, regardless of the parent's lack of contacts with the forum, so long as the subsidiary performs any service, anywhere, that assists the parent's business. Review is urgently needed because the split of authority on this issue creates serious commercial uncertainty, of heightened importance in the international context.

A. Established Background Constitutional Principles.

Certain background constitutional principles are well established. For purposes of jurisdiction, as for general corporation law purposes, parent and subsidiary corporations are generally considered separate and independent. *See, e.g., United States v. Bestfoods, Inc.*, 524 U.S. 51, 61 (1998) (corporate principles of separateness); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) ("jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary. . . . Each defendant's contacts with the forum State must be assessed individually").

In some circumstances, such as when a subsidiary acts as its parent's agent, its contacts may be imputed to its parent. *See, e.g., International Shoe v. Washington*, 326 U.S. 310, 316-17 (1945) (corporations necessarily act through other persons or entities; corporate agent's acts may constitute minimum contacts of the corporation, provided the agent's presence in the forum related to subject matter of lawsuit); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 n.22 (1985) (dictum that jurisdictional contacts may be "ascribed" to another party who is a "primary participant in the enterprise and has acted purposefully in directing those activities")

(citing *Calder v. Jones*, 465 U.S. 783, 790 (1984)); Lea Brilmayer & Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency*, 74 CALIF. L. REV. 1, 2 (1986).[3]

The Fourteenth Amendment's Due Process Clause forbids any tribunal from rendering judgment against a defendant with which it lacks meaningful "contacts, ties, or relations." *International Shoe*, 326 U.S. at 319. Due process allows a court to assert personal jurisdiction over a nonresident defendant only if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice. *Id.* at 316. The "minimum contacts" requirement serves two primary functions: "It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 292 (1980). "Jurisdiction is proper . . . where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Burger King*, 471 U.S. at 475. "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

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3. Another theory, "merger," may apply if abuse of the corporate form justifies piercing the corporate veil and treating two companies as one. *Id.* at 2. Since no such theory was raised in this case, whether "merger" should allow attribution of a subsidiary's contacts to a parent is not raised by this petition.

Personal jurisdiction may be either specific or general. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 nn.8-9 (1984). A court has *specific* jurisdiction when the defendant "purposefully directed" his activities at a forum resident and injuries "arise out of or relate to" those activities. *Burger King*, 471 U.S. at 472 (citation omitted). To exercise *general* jurisdiction, as the California court did here, however, the defendant's activities in the forum state must be so "continuous and systematic" as to render it a de facto resident of that state. *Helicopteros*, 466 U.S. at 414-15. *See, e.g., Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 445-46 (1952) (Philippine corporation, temporarily relocated to Ohio during Japanese occupation, was subject to jurisdiction because its "directors' meetings, business-correspondence, banking, stock transfers, payment of salaries, [and] purchasing of machinery" in Ohio satisfied requirement of "continuous and systematic corporate activities"); *Helicopteros*, 466 U.S. at 418 (president's trip to Texas to negotiate contract, acceptance of checks drawn on Houston bank selected by another party, purchase of equipment from Texas businesses, and sending personnel to Texas for training on equipment, were not so "continuous and systematic" as to support general personal jurisdiction) (citing *Rosenberg Bros. & Co. v. Curtis Brown Co.*, 260 U.S. 516, 518 (1923)).

B. The Courts are in Conflict over Attribution of a Subsidiary's Minimum Contacts to its Foreign Parent Corporation.

The courts are in frank conflict. Under the representative services doctrine, California courts will exercise jurisdiction over a foreign parent corporation by attributing to it the California contacts of its subsidiary, so long as the subsidiary

performs services that assist the parent's business, even if that assistance is completely outside California and even if the parent does not itself have minimum contacts with California. By contrast, every federal Circuit that has considered this issue has held that a foreign parent corporation is not subject to jurisdiction in such circumstances.

1. California's "Representative Services Doctrine."

California's courts have applied the California representative services doctrine to exercise *general* jurisdiction over a foreign parent corporation, by attributing to it the California minimum contacts of its subsidiary. As the court below held, this doctrine applies when a "local subsidiary performs a function that is compatible with, and assists the parent in the pursuit of, the parent's *own* business," and the function is one "that the parent would otherwise have had to perform itself." Appendix A, 15a (emphasis in original). The representative services doctrine is not limited to situations in which the parent indirectly pursues business in California, by using the subsidiary as its arm. That is a simple agency situation, and the court below held that even though no such agency existed to justify jurisdiction here (Appendix A, 11a-14a), the representative services doctrine did apply. The representative services doctrine applies even when the subsidiary assists business totally outside California, such as here, where the subsidiary, DJG, sold products that it designed and manufactured in Indiana, to Canadian specifications, to the parent, Dorel Industries, for distribution exclusively in Canada, with no California connection of any kind:

> DJG, the Indiana subsidiary over which there is no dispute as to jurisdiction, performed functions that assisted the parent company ([Dorel Industries]) in

> the pursuit of its own business as a Canadian operating company. In this case, the Canadian parent company used its U.S. subsidiary to design and manufacture the car seats, a task it otherwise would have done itself, to meet the demands of its Canadian customers. . . . Thus, this case meets the requirements for the exercise of general jurisdiction under the representative services doctrine.

Appendix A, 19a-20a.

The court below held that its application of the representative services doctrine to exercise jurisdiction "was not unreasonable" and did not "offend[] traditional notions of fair play and substantial justice" (even though Dorel Industries lacked any contact with California, could not have expected to be haled into court in California, and the California court's exercise of jurisdiction over a Canadian company would disparage international comity), because Dorel Industries' co-defendant DJG appeared to be insured and able to respond in damages, because they might share counsel, "resulting in some efficiencies and cost saving," because a single forum "will allow for the most efficient resolution of plaintiffs' claims and avoid the risk of inconsistent judgments," and because the court saw no impact "on the procedural and substantive policies of Canada." Appendix A, 20a-22a.

2. The Federal Circuits' Contrary Agency Rule.

The decisions of other courts conflict with California's application of its representative services doctrine. Unlike the California decision here, which employed the representative services doctrine as a "variant of the agency theory," and

found jurisdiction under the representative services doctrine even when it found no agency basis for jurisdiction, other courts rely only on an agency analysis.

Non-California courts sometimes hold it proper to attribute a subsidiary's forum activity to its foreign parent, but only when the subsidiary acts as the parent's agent with respect to that activity. *E.g.*, *Curtis Publishing Co. v. Cassel*, 302 F.2d 132, 137–38 (10th Cir. 1962) (in libel case, jurisdiction over out-of-state publisher whose magazines were distributed in Kansas by in-state subsidiary); *Meier v. Sun Int'l Hotels, Inc.*, 288 F.3d 1264, 1274–75 (11th Cir. 2002) (Bahamian hotels conducted business in Florida through sales agents soliciting and receiving calls from travelers seeking to vacation there). Such decisions are not novel. *See International Shoe*, 326 U.S. at 316 (corporations can, and must, derive their jurisdictional contacts through acts of others); *Burger King*, 471 at 479 n.22 (contacts of another person may be attributed to principal actor so long as principal is a "primary participant in the enterprise" and "acted purposefully in directing those activities").

But an agency relationship does not automatically exist between every parent and its subsidiary. *National Carbide Corp. v. Commissioner*, 336 U.S. 422, 438–39 n.21 (1949) ("As principal it would have been subject to service of process through its agents; as owner of the subsidiary it was not.").

> [A] corporation should not be able to insulate itself from the jurisdiction of the states in which it does business by the simple expedient of separately incorporating its sales force and other operations in each state. That, however, is

> different from a case, which happens to be this case, in which the subsidiaries conduct their own businesses and jurisdiction is sought over the parent simply because it is — the parent.

IDS Life Ins. Co. v. SunAmerica Life Ins. Co., 136 F.3d 537, 541 (7th Cir. 1998). Agency exists only when parties mutually consent to one acting on the other's behalf and subject to its control. Restatement (Second) of Agency § 1 (1958); *see also Norfolk S. Ry. v. Kirby*, 543 U.S. 14, 34 (2004).

Non-California courts also recognize that being an agent for one purpose does not make one an agent for all purposes. *International Shoe*, 326 U.S. at 317 (agency relationship is relevant only if it involves subject matter of lawsuit).

> Unlike the alter ego/piercing the corporate veil theory, when customary agency is alleged the proponent must demonstrate a relationship between the corporations and the cause of action. Not only must an arrangement exist between the two corporations so that one acts on behalf of the other and within usual agency principles, but the arrangement must be relevant to the plaintiff's claim of wrongdoing.

Phoenix Canada Oil Co. v. Texaco, Inc., 842 F.2d 1466, 1477 (3d Cir. 1988).

The federal appellate courts have consistently applied agency principles to find jurisdiction lacking under facts similar to the present case, creating a stark conflict with the California courts. *E.g., Mylan Laboratories, Inc. v. Akzo, N.V.*, 2 F.3d 56 (4th Cir. 1993); *Digi-Tel Holdings, Inc. v.*

Proteq Telecommunications (PTE), Ltd., 89 F.3d 519 (8th Cir. 1996); *Religious Technology Center v. Liebreich*, 339 F.3d 369, 374 (5th Cir. 2003).

In *Mylan*, the plaintiff sued both a foreign parent company and its local, indirect subsidiary, contending that the parent was subject to jurisdiction in Maryland as a result of its subsidiary's tortious activities there. The Fourth Circuit rejected the plaintiff's argument that the parent was subject to jurisdiction because the subsidiary's acts benefited the parent. The record evidence failed to support any inference that the acts in question were intended to benefit the parent, and more importantly, there was no evidence that the requisites of an agency relationship existed between parent and subsidiary with respect to the challenged activity. 2 F.3d at 63.

In *Digi-Tel*, the court reached a similar conclusion when the positions of parent and subsidiary were reversed. The plaintiff sought jurisdiction over the Singapore-based parent company of the local subsidiary in an action for breach of contract and fraud. Citing *Burger King*, the Eighth Circuit agreed that if the parent had acted on the subsidiary's behalf, with the subsidiary's participation and direction, the subsidiary's contacts would subject the parent to jurisdiction. 89 F.3d at 524. But there was no evidence that any of the parent company's pertinent activities were directed by the subsidiary or undertaken for its benefit. Especially since courts must exercise "[g]reat care and reserve" when considering the exercise of jurisdiction over an international defendant, the court held that due process would not allow the requested attribution of contacts. *Id.* at 524–25. *Accord*, *Religious Technology Center*, 339 F.3d at 374 (representative's contacts with forum State must have been

in her capacity as representative to be a basis for jurisdiction over her Estate); *Project Promotions, Inc. v. Cousteau*, 495 F.2d 483, 493 (5th Cir. 1974) ("even were we to assume the existence of a parent-subsidiary relationship, we can find no evidence that the parent exercised the type of control necessary to ascribe to it the activities of the subsidiary").

These decisions and California's representative services doctrine are in direct conflict. The federal decisions rely on agency doctrine, exercising jurisdiction over a parent company only if it empowered a subsidiary to act on its behalf, the subsidiary consented so to act, and the contacts are related to the subject-matter of the lawsuit. The California doctrine requires none of these things, expressly asserting jurisdiction despite the absence of agency. California's application of the representative services doctrine in this case also cannot be reconciled with this Court's decision in *Helicopteros*, which reaffirmed that the mere purchase of products, even from a forum business (which DJG is not), cannot give rise to continuous and systematic contacts with a State. *Helicopteros*, 466 U.S. at 418 (citing *Rosenberg*, 260 U.S. at 518). California's collapsing of parent and subsidiary, regardless of agency, cannot be reconciled with the decisions of non-California courts.

C. Resolution of the Conflict is Vitally Important.

1. Commercial Importance.

Resolution of this conflict is vitally important to modern commerce. The corporate form, and the protection it provides to shareholders and employees alike, is the lifeblood of this nation's economy. The ability to compartmentalize the risks and rewards of a particular business venture is a vital ingredient in any corporation's decision to undertake a new investment.

The fact that this conflict involves California underscores its importance. California is the world's sixth largest economy,[4] and few corporations can conduct interstate commerce without somehow affecting California or its consumers. The directly contrary position of non-California courts — at least in the Fourth, Fifth, and Eighth Circuits, themselves covering considerable geographic and economic areas — leaves corporations that engage in interstate commerce in an unjustified state of uncertainty, unable to foresee whether their decisions to employ proper corporate forms will be respected. This Court should end this uncertainty by resolving the conflict between California and other courts.

2. Importance of Due Process Values.

Resolution of the conflict is also important in order to uphold the due process values of foreseeability, notice, and fundamental fairness.

The primary purpose of the minimum contacts requirement is to ensure that non-residents can predict, with "minimum assurance," the fora in which they will and will not be subject to suit. *World-Wide Volkswagen*, 444 U.S. at 297.

> When a corporation purposefully avails itself of the privilege of conducting activities within the forum State, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance,

4. State of California Legislative Analyst's Office, *Cal Facts: California's Economy and Budget in Perspective* 1, *available at* http://www.lao.ca.gov/2004/cal_facts/cal_facts_2004.pdf.

> passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State.

Id. (citation omitted). In *World-Wide Volkswagen*, the Court rejected a claim that a New York automobile dealership should have foreseen that an Audi automobile would unilaterally be driven by a consumer into Oklahoma, and become involved in an accident. Rather, the foreseeability provided by the Due Process Clause ensures that jurisdiction will exist only when "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297.

The foreseeability aspect of due process is particularly pertinent when a State seeks to extend jurisdiction over a parent company based on the alleged acts of a subsidiary. The insulation of a parent company from the liabilities of its subsidiaries is a principle "deeply ingrained in our economic and legal systems." *Bestfoods*, 524 U.S. at 61 (citation omitted). That deeply ingrained principle renders a contrary exercise of jurisdiction unforeseeable to the parent company that properly observes the distinctions between parent and subsidiary:

> [T]he primary purpose of the corporate form is to prevent a company's owners, whether they are persons or other corporations, from being liable for the activities of the company. Where corporate formalities have been observed, a company's owners reasonably expect that they cannot be held liable for the faults of the company. Thus, such owners do not reasonably anticipate

> being hailed into a foreign forum to defend against liability for the errors of the corporation.

Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 944 (7th Cir. 2000).

The unforeseeable exercise by California courts of jurisdiction over foreign corporations is repugnant to due process. For example, Dorel Industries decided *not* to enter the United States child restraint market in 1988, but rather to invest in a separate corporation, Cosco, Inc. (now DJG), which had a presence in the United States market, and whose liabilities Dorel Industries reasonably expected would remain those of Cosco under established principles of corporate law. Dorel Industries could not possibly foresee that it would be haled into a California court in 2004 to defend itself in a lawsuit arising from a traffic accident involving a booster seat unilaterally designed, manufactured, and distributed by its subsidiary. Dorel Industries had no reason to "procure[e] insurance" to defend itself from such claims because it does not sell booster seats in California. *World-Wide Volkswagen*, 444 U.S. at 297. Because the products at issue are not its own, Dorel Industries cannot "pass[] the expected costs on to consumers" either. *Id.*

3. International Importance.

Even when a defendant has minimum contacts with the forum State, the exercise of jurisdiction sometimes would be fundamentally unfair. Courts must weigh five factors to determine whether the assertion of jurisdiction would violate principles of fair play and substantial justice: (1) the burdens placed upon the defendant, (2) the interests of the forum State,

(3) the plaintiff's interest in obtaining relief, (4) the judicial system's interest in the efficient resolution of controversies, and (5) the advancement of fundamental substantive social policies. *Burger King*, 471 U.S. at 477.

Such situations are uncommon, and the defendant bears the burden to show that the assertion of jurisdiction would violate due process. *Burger King*, 471 U.S. at 477. That showing is less demanding, however, in cases involving an alien defendant. *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 115 (1987); *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1490 (9th Cir. 1993). In *Asahi*, for example, the Court unanimously found the assertion of jurisdiction by the California courts unreasonable.[5] Asahi was a Japanese manufacturer of component parts integrated into a Taiwanese tire that caused injury in California. The California Supreme Court exercised jurisdiction over Asahi because it was "foreseeable" that the finished product would reach and cause injury in California, but this Court reversed, emphasizing "[t]he unique burdens placed upon one who must defend oneself in a foreign legal system." *Id.* at 114.

The presence of an alien defendant requires "a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State." *Id.* at 115. Even though Asahi's component led to the

5. There was no majority opinion on the issue whether Asahi had minimum contacts with California; all Justices agreed, however, that the exercise of jurisdiction would not conform with fair play and substantial justice. *Asahi*, 480 U.S. at 114; *id.* at 116 (Brennan, J., concurring in part and concurring in the judgment); *id.* at 121 (Stevens, J., concurring in part and concurring in the judgment).

plaintiff's injuries, the cross-plaintiff tire manufacturer's interests were minimal because, among other things, it was not a California resident. California's interest was also minimal, both because of uncertainty about choice of law and because its interests were sufficiently accommodated by the application of tort liability to the manufacturers who assembled and distributed finished products in California. When compared to the heavy burden faced by Asahi, these minimal interests of the plaintiff and the forum State made the exercise of jurisdiction over Asahi "unreasonable and unfair." *Id.* at 116.

Here, there is even greater need to scrutinize the fairness of exercising jurisdiction than in *Asahi*. Unlike Asahi, which manufactured the tire component, Dorel Industries had no role in the booster seat involved in the *Jackson* lawsuit. Its only connection is its proper corporate relationship to DJG. The California Court of Appeal found its exercise of jurisdiction "reasonable," without sufficiently weighing the serious burdens on Dorel Industries or issues of international comity. Even if Dorel Industries shared counsel with DJG, the claim against it is necessarily different from the product liability case against DJG. The claim against Dorel Industries must be based on a theory of corporate malfeasance, involving different proof and discovery, Canadian documents and witnesses (*see Benton v. Cameco Corp.*, 375 F.3d 1070, 1079 (10th Cir. 2004) (citing this factor in declining to exercise jurisdiction)), and possible application of Canadian, rather than California, corporate law. *See* FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 43.72 (1999).

By comparison, the interests of the Real Parties and California are minimal. Though the Real Parties have a strong interest in pursuing relief for their injuries, and California has a valid interest in allowing an injured citizen to seek

compensation, "[a]ssertions of such broad interests do not suffice . . . to override the burdens placed upon [the alien defendant]." *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 377 (5th Cir. 1987). The asserted manufacturer and seller of the booster seat are already before the California court. *Cf. Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 376 (8th Cir. 1990) (plaintiff's interest in obtaining relief is "best vindicated" by pursuing its claim against the party actually involved in the alleged wrongdoing); *Asahi*, 480 U.S. at 116 (deterrent effect of being subject to suit in California is more fitting for manufacturers who actually sell products in California).

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari. Indeed, the application of California's representative services doctrine is so plainly erroneous, and the conflict needing resolution so stark, that the Court may grant review and summarily reverse.

Respectfully submitted,

CATHERINE M. MASTERS
Counsel of Record
CAROL R. PRYGROSKY
JONATHAN JUDGE
SCHIFF HARDIN LLP
6600 Sears Tower
Chicago, Illinois 60606
(312) 258-5500

Attorneys for Petitioner

APPENDIX

APPENDIX A — OPINION OF THE COURT OF APPEAL OF CALIFORNIA, SIXTH APPELLATE DISTRICT FILED DECEMBER 15, 2005

COURT OF APPEAL OF CALIFORNIA SIXTH APPELLATE DISTRICT

No. H028516

DOREL INDUSTRIES, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY,

Respondent.

JONATHAN JACKSON III, a Minor, etc., et al.,

Real Parties in Interest.

December 15, 2005, Filed

McADAMS, J. Plaintiff Jonathan Jackson III, a four-year-old child, was severely injured in a motor vehicle accident on December 11, 2003, in Santa Clara County, California. Jackson has filed a personal injury/product liability action against the manufacturer and distributor of the child booster seat he was riding in at the time of the accident, claiming the seat was defective. The defendants include Dorel Juvenile Group, Inc. (DJG), the company that designed, manufactured, and distributed the booster seat, and its grandparent corporation, Dorel Industries, Inc. (DI), a Canadian corporation.

Appendix A

In this statutory writ proceeding, DI challenges the trial court's exercise of personal jurisdiction over the corporation. DI contends that it is merely a grandparent corporation of DJG without sufficient ties to California and that the trial court erred when it found jurisdiction under the "representative services doctrine" and denied DI's motion to quash service of summons. We conclude the exercise of jurisdiction was proper under the representative services doctrine and reasonable under the facts of this case and deny the writ petition.

Factual and Procedural History

I. *Nature of Lawsuit and Identity of Parties*

The plaintiffs are the child, Jonathan Jackson, and his mother, Jocelyn Sullivan (hereafter jointly plaintiffs). Plaintiffs claim the child booster seat Jonathan was using at the time of the accident, a Cosco Grand Explorer Shield Booster Seat, was defective. Plaintiffs claim the child's upper body was not properly restrained because of the design of the seat. As a result of the accident, the child fractured his neck at C-2. He is a quadriplegic. He is in a coma/vegetative state and claims a brain injury.

Defendants who were named in the original complaint include: (1) DJG, the company that designed, manufactured, and distributed the booster seat; (2) Cosco Home and Office Products, DJG's corporate predecessor; (3) Wal-Mart Stores, Inc. (Wal-Mart), the retailer that sold the booster seat; and (4) Talyon J. Orr, the driver of the car. The complaint was amended to add petitioner DI, a Canadian corporation, as Doe One. DJG, Wal-Mart, and Orr have appeared and are defending the action.

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II. *Relationship Between Dorel Defendants*

DJG is a Massachusetts corporation with its principal place of business in Indiana. DJG is owned by Dorel U.S.A., Inc. (Dorel-USA), a Delaware corporation with its principal place of business in Indiana. Dorel-USA has not been named in the litigation. Petitioner DI was incorporated in Quebec, Canada and maintains its principal place of business in Montreal. DJG is a wholly-owned subsidiary of Dorel-USA, which is a wholly owned subsidiary of DI.

III. *History and Business of DI*

DI was founded by Leo Schwartz, his wife, and his son, Jeff Schwartz, in 1962. DI designed and manufactured child restraints and other juvenile products for the Canadian market only. In 1987, DI merged with Ridgewood Industries, a Canadian corporation that manufactured ready-to-assemble (RTA) furniture. Ridgewood Industries was owned by Leo Schwartz's sons, Alan Schwartz and Martin Schwartz, and his son-in-law, Jeff Segel. That same year, DI made an initial public offering in Canada and became a publicly-owned company.

In 1988, DI purchased Cosco, Inc. (corporate predecessor of DJG), a leading manufacturer of child restraints in the United States. Before its acquisition of Cosco, DI did not distribute its products in the United States. DI believed the purchase of Cosco would open a large juvenile market in the United States. DI "grew" its market by acquiring Cosco as a subsidiary with the intent of enhancing shareholder value. As noted *post*, by 2003, 73 percent of DI's sales, including those of its subsidiaries, were in the United States.

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After acquiring Cosco, DI continued to manufacture juvenile products, including car seats, in Canada for a few years. In 1995 or 1996, DI stopped designing and manufacturing its own restraints and began importing Cosco's restraints to Canada for sale to its Canadian customers. Thereafter, its juvenile products were designed and manufactured at Cosco in the United States for sale in both the United States and Canadian markets. In 2000, DI acquired Safety 1st, a manufacturer of juvenile safety devices (safety gates, locks, etc.) and merged Safety 1st and Cosco to form DJG. DJG continued the Cosco business of manufacturing and designing child safety seats for the United States market and for import to DI in Canada.

Over the years, DI has acquired a number of subsidiaries in North America, Europe, Barbados, and Hong Kong. As of December 2003, the Dorel Industries Inc. Group consisted of five companies in the United States (including DJG), two companies in Canada, 13 companies in Europe, three companies in Barbados, and two in Hong Kong. DI describes itself as "a publicly-owned corporation" that is "both a Canadian operating company" and "a parent holding company of several foreign subsidiaries." According to DI, "as the parent holding company to its United States subsidiaries, [DI] provides basic structural services, such as arrangements for financing, insurance, and procurement. In turn, DI's foreign subsidiaries focus their efforts on designing, manufacturing, marketing, and distributing quality products."

DI's business as a Canadian operating company includes the sales of juvenile products it purchases from DJG to

customers in Canada. The products are sold through DJG-Canada. DJG-Canada is a division of DI and not a separate subsidiary company. DI states: "There are differences in the way companies affiliate in Canada, and DI has elected to run its Canadian operations through a system of divisions rather than separate subsidiaries. One of these divisions, DJG-Canada, imports DJG's child restraints for distribution in Canada."

In December 2003, DI stated the following in its annual report filed with the Securities and Exchange Commission: "Dorel[1] is a global manufacturer of consumer products. It specializes in two market segments: juvenile products and home furnishings. Dorel's extensive product offering includes juvenile products such as infant car seats, strollers, high chairs, toddler beds, cribs, infant health and safety aids, play-yards and juvenile accessories; and home furnishings such as a wide variety of [RTA] furniture for home and office use, as well as metal folding furniture, futons, step stools, ladders and other imported furniture items." DI also reported: "Historically, [DI's] business was carried out through three operating segments: RTA Furniture, Juvenile Products and Home Furnishings. [P] In 2003, the Company changed the way in which it reports results from its operating segments. The RTA Furniture and Home Furnishings Segments were combined into one segment that is referred to as Home Furnishings." In 2003, the juvenile products segment accounted for 57.6 percent of sales and the home furnishings segment accounted for 42.4 percent of sales. Operating profits from the juvenile products segment were $ 65.9 million;

1. The report defined "Dorel" as DI and its subsidiaries.

operating profits from the home furnishings segment were $ 66.8 million. In 2003, 73 percent of DI's sales took place in the United States, 3 percent in Canada, and 24 percent in Europe and elsewhere. As of December 2003, DI employed approximately 5,000 people in 14 countries.

IV. *Motion to Quash*

Plaintiffs filed their complaint in February 2004. They amended the complaint in June 2004 and added DI as a Doe defendant. In September 2004, DI moved to quash service of summons on the grounds that DI was not subject to suit in California because the court did not have personal jurisdiction over DI. DI argued plaintiffs could not establish general jurisdiction because DI was a Canadian corporation that had insufficient contacts with California. It asserted that DI did not have any employees, real property, or bank accounts in California and that it did not pay taxes or maintain a registered agent for service of process in California. DI also contended the court could not exercise specific jurisdiction over it because the necessary nexus between the litigation, the forum, and the defendant did not exist. It argued that exercising jurisdiction over DI offended traditional notions of fair play and substantial justice.

Plaintiffs opposed the motion. They argued the court had general jurisdiction over DI based upon its widespread activities in California and under the representative services doctrine, a variant of the agency theory that is used as a basis for general jurisdiction over a foreign parent corporation. (See *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 542-545 [99 Cal.Rptr.2d 824] (*Sonora*

Diamond).) Plaintiffs maintained the court had specific jurisdiction over DI because DI had purposefully availed itself of the benefits of conducting business in the forum by distributing its products in California and by signing a lease guarantee on behalf of Dorel-USA and procuring insurance coverage for Dorel-USA on a warehouse located in Ontario, California.

The trial court found general jurisdiction over DI under the "representative services" doctrine and denied the motion to quash. The court reasoned that DJG performs a function that is compatible with and assists DI in its own business, the importation and sale of child car seats. The court noted that although DI no longer manufactures car seats itself, it purchased other companies to provide that service and sell those products in the United States, including California. The trial court did not reach the parties' arguments regarding specific jurisdiction.

After the court denied its motion to quash, DI filed a petition for writ of mandate or prohibition in this court. Writ review of an order denying a motion to quash service of summons is available pursuant to Code of Civil Procedure section 418.10, subdivision (c). DI seeks an order directing the trial court to vacate its order denying the motion to quash service of summons on the grounds that it does not have the requisite minimum contacts with California. Plaintiffs, real parties in interest, filed preliminary opposition and DI filed a reply. We subsequently issued an order to show cause. Plaintiffs elected to treat their preliminary opposition as a written return and there has been no further briefing.

Appendix A

Discussion

I. *Summary of Petitioner's Arguments*

DI contends the trial court erred in finding general jurisdiction under the representative services doctrine. Petitioner also asserts that the court does not have specific jurisdiction over DI and that the exercise of jurisdiction over DI does not conform with notions of fair play and substantial justice. DI asks this court to issue a writ of mandate directing the trial court to quash service of summons on DI.

II. *Standard of Review*

When a nonresident defendant challenges personal jurisdiction, the plaintiff must prove, by a preponderance of the evidence, the factual basis that would justify the exercise of jurisdiction. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 449 [58 Cal.Rptr.2d 899, 926 P.2d 1085] (*Vons*); *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273 [127 Cal.Rptr.2d 329, 58 P.3d 2] (*Pavlovich*).) If the plaintiff meets this burden, it is then up to the defendant to show that the exercise of jurisdiction would be unreasonable. (*Pavlovich*, *supra*, 29 Cal.4th at p. 273.) In this analysis, the merits of the complaint are not implicated. (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 540.)

On review, the question of jurisdiction is, in essence, one of law. When the facts giving rise to jurisdiction are conflicting, the trial court's factual determinations are reviewed for substantial evidence. (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 540.) Even then, we review independently the trial court's

conclusions as to the legal significance of the facts. (*Vons, supra*, 14 Cal.4th at p. 449; *VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 243-244 [121 Cal.Rptr.2d 1].) When the jurisdictional facts are not in dispute, the question of whether the defendant is subject to personal jurisdiction is purely a legal question that we review de novo. (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 540.)

III. *Basic Principles of Jurisdiction*

The basic principles courts apply in analyzing jurisdiction are well known. They are set forth in *Sonora Diamond* as follows: "Code of Civil Procedure section 410.10 permits California courts to exercise jurisdiction on any basis not inconsistent with state or federal constitutional principles. The federal constitutional principles governing jurisdiction, represented by the legal shorthand references *minimum contacts*, *Internat. Shoe*, and *World-Wide Volkswagen* familiar to every law student, are simple to state but difficult to apply. The overarching general rule is that a court may assume jurisdiction over a nonresident defendant where the defendant's 'minimum contacts' with the forum state are sufficient to make the maintenance of the action inoffensive to traditional concepts of fair play and substantial justice. (*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 320 [66 S.Ct. 154, 90 L.Ed. 95].) Thus, minimum contacts exist where the defendant's conduct in or connection with the forum state is such that the defendant should reasonably anticipate being subject to suit in the state (*World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297 [100 S.Ct. 559, 62 L.Ed.2d 490]); that is, the defendant's contacts with the forum state are substantial, continuous and

systematic (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445 [58 Cal.Rptr.2d 899, 926 P.2d 1085]). 'The sufficiency of such contacts [to support jurisdiction] is a matter of constitutional law on which the Supreme Court of the United States has the final voice. A judgment rendered in the absence of such [contacts] violates the due process clause of the Fourteenth Amendment.' [Citations.] When the defendant is a foreign corporation, the question whether 'jurisdiction may be constitutionally exercised depends upon the circumstances of each individual case. . . . [T]he analysis is concerned with weighing the various relevant "contacts" by the foreign corporation within the state attempting to exercise jurisdiction.' [Citation.]" (*Sonora Diamond, supra*, 83 Cal.App.4th at pp. 535-536.)

"The concept of minimum contacts embraces two types of jurisdiction—general and specific. General jurisdiction results where the defendant's contacts with the forum state are so 'systematic and so continuous as to make it consistent with traditional notions of fair play and substantial justice to subject the defendant to the jurisdiction of the forum, even where the cause of action is unrelated to the contacts.' [Citations.] Specific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. [Citations.] *Specific* jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play

and substantial justice." (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 536.) In this case, the court concluded there was general jurisdiction under the representative services doctrine and did not reach the issue of specific jurisdiction.

In cases involving international defendants, the procedural and substantive interests of other nations in a state court's assertion of jurisdiction, as well as "the Federal Government's interests in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State. 'Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.' [Citation.]" (*Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 115 [107 S.Ct. 1026, 94 L.Ed.2d 92].)

IV. *General Jurisdiction Based on Agency Principles*

"[A] parent corporation's formation and ownership of an independent subsidiary for the purpose of conducting business in the forum state does not itself subject the parent to jurisdiction in that state." (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 546.) "[N]either ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business." (*Id.* at p. 540.) " 'Control' in this context means the degree of direction and oversight normal and expected from the status of ownership; it comprehends such common characteristics as interlocking

directors and officers, consolidated reporting, and shared professional services. [Citations.] The relationship of owner to owned contemplates a close financial connection between parent and subsidiary and a certain degree of direction and management exercised by the former over the latter." (*Id.* at pp. 540-541.)

Case law identifies one situation when the acts of the parent may be found to cross the line of legitimate ownership and control of the subsidiary and expose the parent corporation to the power of the state in which the subsidiary does business. "[W]here the nature and extent of the control exercised over the subsidiary by the parent is so pervasive and continual that the subsidiary may be considered nothing more than an agent or instrumentality of the parent, notwithstanding the maintenance of separate corporate formalities, jurisdiction over the parent may be grounded in the acts of the subsidiary/agent. [Citation.] In this instance, the question is ... whether the degree of control exerted over the subsidiary by the parent is enough to reasonably deem the subsidiary an agent of the parent under traditional agency principles. [Citation.] The jurisdiction acquired by the forum state under this rationale is general." (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 541, fn. omitted.)

"[I]f a parent corporation exercises such a degree of control over its subsidiary corporation that the subsidiary can legitimately be described as only a means through which the parent acts, or nothing more than an incorporated department of the parent, the subsidiary will be deemed to be the agent of the parent in the forum state and jurisdiction will extend to the parent." (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 541.)

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"The parent's general executive control over the subsidiary is not enough; rather there must be a strong showing beyond simply facts evidencing 'the broad oversight typically indicated by [the] common ownership and common directorship' present in a normal parent-subsidiary relationship. [Citations.] As a practical matter, the parent must be shown to have moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's *day-to-day* operations in carrying out that policy." (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 542.)

There was evidence that the executive committee of DI conducted annual budget meetings with representatives of DJG to monitor the status of their investment. Members of DI's executive committee also visited with their subsidiary's (DJG's) major customers, accompanied by sales executives from the subsidiary approximately once a year per customer. There was also evidence that some DI employees and executives attended sales and product development meetings at DJG to obtain information regarding products that were coming to market for sale in Canada. In addition, members of DI's board of directors received copies of the minutes from DJG's product development committee meetings. Two individuals on the DI board of directors also served on the board of DJG. DI submitted a company-wide report to the SEC that summarized the activity of DI and all of its subsidiaries. DI also guaranteed the lease and provided insurance coverage for Dorel-USA on a warehouse located in California. Although Dorel-USA is listed as the tenant on the lease, there was evidence that DJG actually used the warehouse and was the tenant. DI obtained a license from

the California Bureau of Home Furnishings and Thermal Insulation. None of this appears to be outside the normal parent-subsidiary relationship. (*Sonora Diamond, supra*, 83 Cal.App.4th at pp. 546-551.)

On the other hand, there was evidence that DJG operated independently from DI. In declarations, two of DI's directors stated that DI and DJG maintained separate corporate records and observed all corporate formalities, that DI did not exercise day-to-day control over DJG's personnel, accounting, or management functions or its operational activities, including the design, manufacture, marketing and distribution of child car seats. Overall, the record does not support the conclusion that DI had taken over the day-to-day operations of DJG. Thus, there is no basis for finding jurisdiction on an agency theory.

V. *The Representative Services Doctrine as a Variant of Agency Theory*

The representative services doctrine is a variant of the agency theory of general jurisdiction. (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 543, fn. 11.)

A foreign corporation is doing business in the forum state under this theory when its representative in the forum state " 'provides services beyond "mere solicitation" and these services are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.' " (*Chan v. Society Expeditions, Inc.* (9th Cir. 1994) 39 F.3d 1398, 1405 (*Chan*).)

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It "supports the exercise of jurisdiction when the local subsidiary performs a function that is compatible with, and assists the parent in the pursuit of, the parent's *own* business, but the doctrine does not support jurisdiction where the parent is merely a holding company whose only business pursuit is the investment in the subsidiary." (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 543.)

" '[I]f a parent uses a subsidiary to do what it otherwise would have done itself, it has purposely availed itself of the privilege of doing business in the forum. Jurisdiction over the parent is therefore proper. [Citations.] This contrasts to the case of a holding company. In such a case, the subsidiary is not performing a function that the parent would otherwise have had to perform itself (the holding company could simply hold another type of subsidiary). In such a case, imputing jurisdictional contacts would be improper.' " (*Sonora Diamond, supra*, 83 Cal.App.4th at p. 543.)

A review of cases that have applied the representative services doctrine is instructive. The plaintiff in *Chan* sued for damages for personal injury arising out of the capsizing of an inflatable raft operating from a cruise ship. The parent company was a German corporation that owned and operated the cruise ship but had no contacts with the forum state (Washington). The local corporation/subsidiary was in the business of marketing cruises and was responsible for chartering the cruise ship from which the raft operated. A German citizen was the sole shareholder, chairperson, and president of the local corporation/subsidiary and the president and sole owner of the parent corporation. The Ninth Circuit Court of Appeals found that the representative services

doctrine might sustain jurisdiction over the parent based upon the activities of the local corporation because the parent "is in the business of operating the [cruise ship], has no other business than the carriage of passengers, and the passengers were obtained, ticketed, and supplied with cabins solely through the efforts of [the local corporation]." (*Chan*, *supra*, 39 F.3d at p. 1405.)

In an analogous situation, the court in *Paneno v. Centres for Academic Programmes Abroad Ltd.* (2004) 118 Cal.App.4th 1447 [13 Cal.Rptr.3d 759] affirmed a finding of general jurisdiction based on the representative services doctrine over a British company that administered foreign studies programs and contracted with various entities in foreign countries to house students studying abroad. The court based the exercise of jurisdiction on the activities of the company's California affiliate that marketed and recruited students for the foreign studies programs. (*Id.* at pp. 1451-1452.) The court reasoned that the British entity was not just a holding company but was itself engaged in business operations that were closely connected to the local entity, which performed functions solely to assist the British company in its business. (*Id.* at pp. 1456-1457.)

In *Sonora Diamond*, the court concluded that there was no jurisdiction under the representative services doctrine where the foreign-parent corporation was merely a passive investor in a local mining company. The court observed that the parent company "engaged in no independent business operations, whether connected to mining or not." (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 544.) The parent was a holding company whose business was not mining but rather

its investment in Sonora Mining, the subsidiary. The court concluded the subsidiary was not " 'performing a function that [the parent] would otherwise have had to perform itself.' " (*Id.* at p. 545.) The court reasoned that had the parent "for example, owned the rights to the gold and used Sonora Mining as the operating and marketing entity, perhaps general jurisdiction over [the parent] would be proper under the representative services rationale, because [the parent] in that situation could not reap the benefits of its rights unless it or someone else removed and sold the ore. Neither this circumstance, nor any analogous one, is present in the record of this case. [The parent corporation] was not engaged in the mining business and owned nothing but the stock of [the subsidiary]." (*Ibid.*)

This court recently addressed the application of the representative services doctrine in a case involving jurisdiction over two Swiss drug companies in *F. Hoffman-La Roche v. Superior Court* (2005) 130 Cal.App.4th 782 [30 Cal.Rptr.3d 407] (*Hoffman-La Roche*). In *Hoffman-La Roche*, there was no evidence that the first Swiss drug company was "anything other than a true passive holding company that globally invests in pharmaceutical subsidiaries." (*Id.* at p. 802.) Thus, we concluded based on *Sonora Diamond* that there was no jurisdiction under the representative services doctrine. (*Ibid.*)

With regard to the second Swiss company, the record did not establish either that it "exercised pervasive and continuous control over the business of either of the U.S. . . . defendants so as to establish a general agency relationship, or that the U.S. entities acted as mere instrumentalities of

[the foreign corporation] in the furtherance of *its* business to invoke jurisdiction under the representative services doctrine." (*Hoffman-La Roche*, *supra*, 130 Cal.App.4th at p. 802.) This court held that the collaborative activity between the Swiss entity and the U.S. defendants relating to the collection, evaluation, and reporting of drug adverse events did not extend beyond normal operational control between a parent and a subsidiary and that the operational activities of the U.S. subsidiaries were not in furtherance of the Swiss company's business, thus precluding application of the representative services doctrine. (*Id.* at p. 803.) We also concluded that the exercise of jurisdiction over the Swiss defendants based solely on their collaborative and global efforts to create a more efficient, more responsive, and safer system for monitoring and reporting adverse drug events associated with prescription drugs worldwide was unreasonable. (*Id.* at p. 805.)

In this case, the trial court found the representative services doctrine applies because DJG performs a function that is compatible with and assists DI in the pursuit of DI's own business, the sale of juvenile products, including car seats. The court reasoned that DI imports and sells child car seats manufactured by its subsidiary, DJG, and that it purchased DJG to provide that service and expand its market into the U.S.

DI contends the court erred in finding jurisdiction under the representative services doctrine because there was no evidence that DJG performed acts that DI otherwise would have had to perform itself. However, it was undisputed that DJG manufactured juvenile products that DI had previously

manufactured itself for sale to DI's Canadian customers. DI argues that it never sold its products in California before acquiring DJG. It contends that although it could have tried to break into the California market itself, it elected to invest in DJG for the purpose of expanding into the U.S. It argues that any business in California belongs to DJG, not DI, and that DJG works independently of DI, designing, manufacturing, and distributing its own products.

(1) This case is factually distinguishable from *Sonora Diamond* and *Hoffman-La Roche* since there was evidence that in addition to operating as a holding company and investing in subsidiary companies, DI continued its traditional business of manufacturing and distributing juvenile products in Canada, including car seats, and that it relied on DJG to design and manufacture those car seats. In addition, DI worked closely with DJG to insure that the car seats met the requirements of the Canadian government with regard to safety and labeling and the demands of the Canadian marketplace in terms of style. This work was done by DJG-Canada, a division of DI that was not a separate subsidiary company. There was also evidence that DJG-Canada got involved in customer service issues related to DJG products that were manufactured in the U.S. and distributed in Canada. Thus, there was evidence that DJG, the Indiana subsidiary over which there is no dispute as to jurisdiction, performed functions that were compatible with and assisted the parent company (DI) in the pursuit of the parent's own business as a Canadian operating company. In this case, the Canadian parent company used its U.S. subsidiary to design and manufacture the car seats, a task it otherwise would have done itself, to meet the demands of its

Canadian customers. In this respect, the case is much more like *Chan* and *Paneno* than *Sonora Diamond*. Thus, this case meets the requirements for the exercise of general jurisdiction under the representative services doctrine. (*Sonora Diamond*, *supra*, 83 Cal.App.4th at p. 543.)

VI. *Reasonableness of Exercising Jurisdiction*

The final step in the analysis is to determine whether the exercise of jurisdiction is reasonable. As noted previously, DI has the burden of proving the exercise of jurisdiction is unreasonable. (*Vons*, *supra*, 14 Cal.4th at p. 449.) "A determination of the reasonableness of the exercise of jurisdiction in a given case involves evaluation of several factors: the burden on the defendant, the interests of the forum state, and the plaintiff's interest in obtaining relief. (*Asahi Metal*, *supra*, 480 U.S. 102, 113.) A court must also weigh ' "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." [Citation.]' (*Asahi Metal*, *supra*, 480 U.S. at p. 113.) Where an international defendant is concerned, a court must also 'consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the California court.' (*Asahi Metal*, *supra*, 480 U.S. at p. 115.)" (*Hoffman-La Roche*, *supra*, 130 Cal.App.4th at p. 805.)

DI contends the exercise of jurisdiction is unreasonable and offends traditional notions of fair play and substantial justice because it "has no significant relationship with California—it owns no office or real property in California,

conducts no advertising in California, and has no bank accounts, business records, or agent for service of process in California." It asserts further that DI could not have anticipated being haled into a California court because of an isolated traffic accident involving a child restraint produced by its subsidiary. DI argues that the harassment of a foreign grandparent corporation who owns the stock of another holding company (Dorel-USA) who owns the stock of the wrongdoer (DJG) serves no societal or judicial interest consistent with notions of fair play and substantial justice. It asserts also that the plaintiffs possess a remedy against the wrongdoers, DJG and Wal-Mart, who have appeared in the action. It argues that allowing a California court to impose judgment against a Canadian corporation who has only negligible ties to the forum disparages international comity. Plaintiffs do not address this issue.

Nothing in this record suggests that DJG is uninsured or unable to respond in damages in the event the trier of fact finds liability. As noted before, DJG and Wal-Mart have appeared in the action and are represented by counsel. The same attorneys who represent DJG and Wal-Mart represent DI in these writ proceedings. Assuming the same lawyers will represent DI in defense of the case, the cost of defending the action would be shared by DJG and DI, resulting in some efficiencies and cost saving. Having all of the potentially-liable defendants appear in the same forum in California will allow for the most efficient resolution of plaintiffs' claims and avoid the risk of inconsistent judgments attendant to pursuing multiple proceedings in different forums. If plaintiffs prevail on liability, the damages will be high, given the nature of the child's injuries. There is nothing in the record

regarding the effect of this litigation on the procedural and substantive policies of Canada. With these points in mind, we hold the exercise of jurisdiction over the Canadian corporation in this case was not unreasonable.

For all of the foregoing reasons, we conclude the court did not err when it denied DI's motion to quash service of summons.

Disposition

The writ petition is denied. Real parties in interest are awarded their costs in this original proceeding.

Premo, J., and Rushing, P. J., concurring.

APPENDIX B — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA RE: MOTION TO QUASH DATED FEBRUARY 17, 2005

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

Case No. 1-04-CV-014652

Jonathan Jackson III, by and through his Guardian ad Litem, Jocelyn Sullivan, et al.,

Plaintiffs,

vs.

Dorel Juvenile Group, Inc., et al.,

Defendants.

ORDER RE: MOTION TO QUASH

The motion to quash service of summons by specially-appearing defendant Dorel Industries, Inc. ("Dorel Industries") came on for continued hearing before the Honorable Socrates Peter Manoukian on December 14, 2004, at 9:00 a.m. in Department 7.

The matter having been submitted, the Court orders as follows:

Appendix B

I. FACTUAL BACKGROUND

According to the allegations of the complaint, plaintiff Jonathan Jackson, III, age four, was injured in a vehicular accident. The form complaint lists causes of action for products liability and "motor vehicle." Jackson has named as defendants all of the entities believed to have been involved in the design, manufacturer and distribution of the allegedly defective product.[1]

Dorel Industries is a Canadian corporation, with its principal place of business in Montreal. It owns 100 percent of the corporate stock of Dorel U.S.A., Inc., a holding company which, in turn, owns 100 percent of the stock in a company called Dorel Juvenile Group, Inc. ("DJG"). Dorel Industries does not have a registered agent for service of process in California, does not advertise in California and does not own any property or offices in the state. It does not maintain employees, bank accounts, business documents or telephone listings and is not required to pay taxes in California. It does not manufacture, design, advertise, market, package, sell or distribute child restraint devices in California.

II. DISCUSSION

In a motion to quash, the plaintiff bears the burden of establishing the facts supporting the exercise of jurisdiction, by means of admissible evidence. (*Arnesen v. Raymond Lee Organization* (1973) 31 Cal. App. 3d 991, 995.) General conclusory allegations in the complaint are not sufficient, in and of themselves. (*See id.* at 997.)

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1. Although the complaint does not identify the allegedly defective product, it appears to be undisputed that the product at issue is a "Cosco Grand Explorer Shield Booster Seat."

Appendix B

California courts can exercise personal jurisdiction over foreign defendants "on any basis not inconsistent with the Constitution of this state or of the United States." (Code of Civil Procedure § 410.10). The basic test is whether the defendant had "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice' [Citations.]" (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) This concept of "minimum contacts" encompasses two distinct types of jurisdiction: "general" and "specific." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal. App. 4th 523, 536.)

A. General Jurisdiction

1. Dorel Industries' Opening Arguments

Dorel Industries argues that plaintiffs cannot establish general jurisdiction because it is a Canadian corporation and it does not have sufficient contacts with California. Dorel Industries does not employ anyone in California, does not maintain a registered agent in California for service of process, does not advertise in the state, does not possess real property or bank accounts in California and does not pay taxes in California.

2. Plaintiffs' Opposing Arguments

Plaintiffs counter that Dorel Industries may be subject to personal jurisdiction under the "representative services" doctrine if Dorel Industries' subsidiaries perform functions that assist it in the pursuit of its own business. When it was

founded in 1962, Dorel Industries manufactured child car seats for sale in Canada. In the late 1980s, Dorel Industries sought to expand its business internationally and thus purchased two juvenile product manufacturers located in the United States, Cosco, based in Indiana and Infantino, Inc., based in San Diego. Cosco was manufacturing a line of child car seats that was competing with Dorel Industries' products. After the acquisition, Dorel Industries ceased manufacturing juvenile products in Montreal and began importing these products from the facilities in Indiana and California. In 2000, Dorel Industries consolidated Cosco and another company it had acquired, Safety 1st, into a new entity, DJG. DJG manufacturers child car seats in Indiana, including the Cosco Grand Explorer Shield Booster Seat. Dorel Industries imports DJG's products into Canada.

In its annual reports, Dorel Industries describes DJG, the entity which manufactures the child safety seats in Indiana, as a "division." DJG employees are Dorel Industries employees and carry out Dorel Industries' business, including the sale of juvenile products, such as car seats, in California. Two Dorel Industries' employees, Liz Klaus and David Hall, participated in design meetings for the Cosco Grand Explorer Shield Booster Seat. In addition, Klaus and Hall's approval was required for details such as product labels as well as design features. Klaus was named Quality Assurance Manager in 2001 and is responsible for ensuring that all the labels and instructions for products coming to Canada meet Canadian regulations.

Jeffrey Segal testified that he regularly participants in marketing and sales activities with DJG customers. He also

periodically attended product development meetings in Indiana and received copies of the meeting minutes each month. Segal reviews the budgets of each of Dorel Industries' subsidiaries on a quarterly basis, but sometimes offers opinions on certain expenditures such as whether a product license from Disney or Eddie Bauer, for example, is worth the expense.

3. Dorel Industries' Reply

Dorel Industries claims that plaintiffs fail to identify any services that DJG supposedly provides to it. The "representative services" doctrine only applies where the local subsidiary performs a function that is compatible with and assists the parent corporation in the pursuit of the parent company's own business. Plaintiffs claim that because Dorel Industries could have decided to continue manufacturing its own child restraints rather than invest in DJG, Dorel Industries should be accountable for the actions of DJG. Dorel Industries does not own DJG's manufacturing plant in Indiana and does not won DJG's warehouses.

Further, just because Dorel Industries takes credit in its reports for the collective accomplishments of its subsidiaries does not mean that Dorel Industries is not a separate distinct entity from those subsidiaries.

Klaus also testified that she attended meetings in Indiana to stay informed as to the products that were coming out so she could keep the sales team in Canada informed. Hall indicated that he attended product development meetings twice a year; if they took place at the same time he was in Indiana to discuss Canadian product sales.

Plaintiffs also misstate Segel's testimony. He attends "one formal meeting per year" for each subsidiary, none of which dealt with issues like customer agreements. He does not recall attending any meetings discussing the Cosco Grand Explorer Shield Booster Seat. Although he does express opinions about the licensing decisions of Dorel Industries' subsidiaries, the subsidiaries always generate the idea, negotiate the deal and hold the license.

4. Analysis

General jurisdiction exists where the defendant's contacts with the forum state are so "systematic and continuous as to make it consistent with traditional notions of fair play and substantial justice to subject the defendant to the jurisdiction of the forums, even where the cause of action is unrelated to the contacts." (*Calvert v. Huckins* (E.D. Cal. 1995) 875 F. Supp. 674, 677.)

"[N]either ownership nor control of a subsidiary corporation by a foreign parent corporation, without more, subjects the parent to the jurisdiction of the state where the subsidiary does business." (*Sonora Diamond Corp. v. Superior Co*urt (2000) 83 Cal. App. 4th 523, 540.) Under the analysis set forth in *Sonora*, general jurisdiction may be found, among other circumstances, where the "local subsidiary performs a function that is compatible with, and assists the parent in the pursuit of, the parent *own* business." (*Id.* at 543.) This is the "representative services" doctrine.

The evidence presented by plaintiffs shows that DJG performs a function "compatible with" and which "assists"

Dorel Industries in the pursuit of Dorel Industries' business. Dorel Industries imports into Canada and sells child car seats manufactured by its subsidiary, DJG. DJG manufactures and sells car seats in the United States. As explained in *Gallagher v. Mazda Motors of America, Inc.* (E.D. Pa 1992) 781 F. Supp. 1079, "[I]f a parent uses a subsidiary to do what it otherwise would have done itself, it has purposely availed itself of the privilege of doing business in the forum. . . . This contrasts to the case of a holding company. In such a case, the subsidiary is not performing a function that the parent would otherwise have had to perform itself (the holding company could simply hold another type of subsidiary)." (*Gallagher v. Mazda Motors of America, Inc., supra*, 781 F. Supp. at p. 1085.) Dorel Industries' business is selling child car seats. Although it no longer manufactures such products itself, it purchased other companies to provide that service and to sell those products in the United States, including California.

As Dorel Industries has "availed itself of the privilege of doing business in the forum" under the "representative services" doctrine, the motion to quash is DENIED.

B. Specific Jurisdiction[2]

1. Dorel Industries' Opening Arguments

Dorel Industries contends that plaintiffs cannot establish specific jurisdiction over it either. Dorel Industries merely

2. As the Court has found that Dorel Industries is subject to "general" jurisdiction in California, there is no need to analyze whether or not there are sufficient minimum contacts to support "specific" jurisdiction over that defendant. The parties' arguments on the issue of specific jurisdiction are summarized herein.

owns Dorel U.S.A., which owns DJG. DJG allegedly designed and manufacturered the product at issue. Dorel Industries has no pertinent connection with California, did not design, manufacture or distribute the Cosco Grand Explorer Shield Booster Seat or any warning labels that were placed on that product. Plaintiff cannot attribute DJG's contacts with California to Dorel Industries. Dorel Industries does not employ marketing, sales or advertising personnel in California, nor does it employ agents to distribute or sell child restraints of any kind in California.

Exercising jurisdiction over Dorel Industries would offend traditional notions of fair play and substantial justice. Dorel Industries has no significant relationship with California. It maintains no offices, owns no property, does not advertise, has no bank accounts, does not maintain any records, does not employ any agents and does not pay taxes in the state. Dorel Industries could not reasonably anticipate being sued in California because of a traffic accident, involving a child restraint that was produced and sold by a different corporation. California has no interest in regulating Dorel Industries' investment or other activities. DJG, the alleged manufacturer and designer of the product, has made a general appearance in this action, as has the retailer, Wal-Mart Stores, Inc., so plaintiffs will not be without a remedy.

In addition, for a California court to exercise jurisdiction over a foreign entity where that entity has such negligible ties to California would be manifestly unfair and would infringe on international comity.

Appendix B

2. Plaintiffs' Opposing Arguments

Plaintiffs argue that Dorel Industries has been conducting business in California for years. It guaranteed performance of a lease in Ontario, California and, in that guaranty, submitted to the jurisdiction of California courts. The lease was for a distribution center for Dorel Industries' products, including child car seats and other products manufacturered by DJG in Indiana. Daniel Cuellar, DJG's Director of Distribution, testified that DJG presently operates two distribution facilities in California, one in Fontana in addition to the one in Ontario.

In addition, Dorel Industries holds business licenses in California, submitting it to the jurisdiction of California's courts. Dorel Industries holds License No. 123022 with the California Department of Consumer Affairs, which allows it to manufacture and import its products into the state.

3. Dorel Industries' Reply

Cuellar actually testified that the Ontario and Fontana warehouses hold products manufactured in the Pacific Rim and imported from overseas. Traditional child restraints, like the Cosco Grand Explorer Shield Booster Seat are manufactured and distributed from Indiana. In addition, Cuellar works for DJG, not Dorel Industries, and DJG pays all the warehouse bills.

In addition, the forum selection and consent-to-jurisdiction clause in the lease guaranty expressly states that it applies to "any action or proceeding with respect to this

guaranty." The instant action does not involve the guaranty and thus the consent-to-jurisdiction clause does not apply. There is no relationship between the Ontario warehouse and the Cosco Grand Explorer Shield Booster Seat.

Finally, even though Dorel Industries hold a license from the California Bureau of Home Furnishings and Thermal Insulation, part of the Department of Consumer Affairs, that license relates to the import of furniture and bedding, not child restraints.

Dated: 17 Feb 2005

/s/ Peter Manoukian
Socrates Peter Manoukian
Judge of the Superior Court

APPENDIX C — OPINION OF THE SUPREME COURT OF CALIFORNIA DENYING PETITION FOR REVIEW AND DEPUBLICATION REQUEST FILED MARCH 1, 2006

SUPREME COURT OF CALIFORNIA

No. S140687

DOREL INDUSTRIES, INC.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA CLARA COUNTY,

Respondent;

JONATHAN JACKSON, III, a Minor, etc. et al.,

Real Parties in Interest.

March 1, 2006, Filed

OPINION

Petition for review & depublication request denied.

Kennard, J., is of the opinion the petition should be granted. Chin, J., was recused and did not participate.